



STATE OF ARIZONA

JANICE K. BREWER  
GOVERNOR

EXECUTIVE OFFICE

April 29, 2011

The Honorable Ken Bennett  
Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, Arizona 85007

RE: House Bill 2166 (low income housing; property tax)

Dear Secretary Bennett,

Today I vetoed House Bill 2166. The bill would require county assessors to adopt an income-based valuation formula rather than the traditional market-based approach for evaluating Federal Low Income House Tax Credit Properties.

I believe that this bill creates a bad precedent by creating inequities in our property tax system. County assessors have committed to me that they will continue to reach out to legislators and others interested in achieving a solution that is workable for all involved.

Sincerely,

A handwritten signature in black ink that reads "Janice K. Brewer". The signature is fluid and cursive, with the first name "Janice" being the most prominent part.

Janice K. Brewer  
Governor

cc: The Honorable Russell Pearce  
The Honorable Andy Tobin  
The Honorable Justin Olson  
Senate Secretary  
Chief Clerk of the House of Representatives  
Arizona News Service

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## HOUSE BILL 2166

AN ACT

AMENDING SECTION 42-12004, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 13, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 11; RELATING TO PROPERTY TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-12004, Arizona Revised Statutes, is amended to  
3 read:

4 42-12004. Class four property

5 A. For purposes of taxation, class four is established consisting of:

6 1. Real and personal property and improvements to the property that  
7 are used solely as leased or rented property for residential purposes, that  
8 are not included in class one, two, three, six, seven or eight and that are  
9 valued at full cash value.

10 2. Child care facilities that are licensed under title 36, chapter 7.1  
11 and that are valued at full cash value.

12 3. Real and personal property and improvements to property that are  
13 used to operate nonprofit residential housing facilities that are structured  
14 to house or care for persons who are handicapped or sixty-two years of age or  
15 older and that are valued at full cash value.

16 4. Real and personal property and improvements that are used to  
17 operate licensed residential care institutions or licensed nursing care  
18 institutions that provide medical services, nursing services or health  
19 related services and that are structured to house or care for persons who are  
20 handicapped or sixty-two years of age or older and that are valued at full  
21 cash value.

22 5. Real and personal property consisting of no more than six rooms of  
23 owner-occupied residential property that are leased or rented to transient  
24 lodgers at no more than a fifty per cent average annual occupancy rate,  
25 together with furnishing no more than a breakfast meal, by the owner of the  
26 property and that is valued at full cash value.

27 6. Real and personal property consisting of residential dwellings that  
28 are maintained for occupancy by agricultural employees as a condition of  
29 employment or as a convenience to the employer, that is not included in class  
30 three and that is valued at full cash value. The land associated with these  
31 dwellings shall be valued as agricultural land pursuant to chapter 13,  
32 article 3 of this title.

33 7. Real property and improvements to property constituting common  
34 areas that are valued pursuant to chapter 13, article 9 of this title.

35 8. Real and personal property that is defined as timeshare property by  
36 section 32-2197 and valued pursuant to chapter 13, article 10 of this title,  
37 except for any property used for commercial, industrial or transient  
38 occupancy purposes and included in class one to the extent of that use.

39 9. LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTIES THAT ARE  
40 VALUED PURSUANT TO CHAPTER 13, ARTICLE 11 OF THIS TITLE.

41 B. Subsection A, paragraphs 3 and 4 of this section shall not be  
42 construed to limit eligibility for exemption from taxation under chapter 11,  
43 article 3 of this title.

1           Sec. 2. Title 42, chapter 13, Arizona Revised Statutes, is amended by  
2 adding article 11, to read:

3           ARTICLE 11. VALUATION OF LOW INCOME MULTIFAMILY  
4                       RESIDENTIAL RENTAL PROPERTY

5           42-13501. Definitions

6           IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7           1. "LOW INCOME HOUSING TAX CREDIT PROGRAM" MEANS THE FEDERAL LOW  
8 INCOME HOUSING TAX CREDIT PROGRAM ESTABLISHED BY THE TAX REFORM ACT OF 1986,  
9 CODIFIED IN SECTION 42 OF THE INTERNAL REVENUE CODE AND ADMINISTERED BY THE  
10 ARIZONA DEPARTMENT OF HOUSING PURSUANT TO SECTION 35-728 TO ENCOURAGE  
11 CONSTRUCTION AND REHABILITATION OF LOW INCOME RENTAL HOUSING.

12           2. "LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY" MEANS  
13 MULTIFAMILY RESIDENTIAL PROPERTY WHERE ALL OF THE FOLLOWING REQUIREMENTS ARE  
14 MET:

15           (a) THE OWNERSHIP ENTITY RECEIVED FEDERAL INCOME TAX CREDITS PURSUANT  
16 TO SECTION 42 OF THE INTERNAL REVENUE CODE THROUGH THE LOW INCOME HOUSING TAX  
17 CREDIT PROGRAM.

18           (b) THE PROPERTY REMAINS BOTH INCOME AND RENT RESTRICTED CONSISTENT  
19 WITH SECTION 42 OF THE INTERNAL REVENUE CODE AND THE PROVISIONS OF THE  
20 DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANTS AGREEMENT RECORDED  
21 ON THE PROPERTY. THE REQUIREMENT OF THIS SUBDIVISION IS MET IF AN  
22 AFFIRMATIVE LAND USE RESTRICTIVE COVENANTS AGREEMENT IS NOT YET RECORDED ON  
23 THE PROPERTY BUT THE PROPERTY IS OTHERWISE SUBJECT TO BOTH INCOME AND RENT  
24 RESTRICTIONS UNDER SECTION 42 OF THE INTERNAL REVENUE CODE.

25           (c) NO FEDERAL, STATE OR TRIBAL COURT HAS ENTERED A JUDGMENT OR ORDER  
26 BASED ON A FINDING THAT AN ACT OR OMISSION OF AN OWNER OR OPERATOR OF THE  
27 PROPERTY CONSTITUTES A BREACH OR VIOLATION OF EITHER:

28           (i) THE DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANTS  
29 AGREEMENT RECORDED ON THE PROPERTY.

30           (ii) RESTRICTIONS UNDER SECTION 42 OF THE INTERNAL REVENUE CODE  
31 IMPOSED ON THE PROPERTY BUT NOT CONTAINED WITHIN AN AFFIRMATIVE LAND USE  
32 RESTRICTIVE COVENANTS AGREEMENT.

33           42-13502. Identifying low income multifamily residential rental  
34                       property

35           PROPERTY SUBJECT TO VALUATION BY THE COUNTY ASSESSOR UNDER THIS ARTICLE  
36 CONSISTS OF LAND, BUILDINGS AND PERSONAL PROPERTY OF LOW INCOME MULTIFAMILY  
37 RESIDENTIAL RENTAL PROPERTY AS DEFINED IN SECTION 42-13501.

38           42-13503. Valuation of low income multifamily residential  
39                       rental property; confidentiality; definitions

40           A. SUBJECT TO SECTION 42-13504, THIS ARTICLE ALLOWS THE OWNER OF LOW  
41 INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY TO ELECT A STATUTORY INCOME  
42 METHOD FOR VALUING LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY.

43           B. UPON TIMELY ELECTION BY THE OWNER OF A LOW INCOME MULTIFAMILY  
44 RESIDENTIAL PROPERTY, THE ASSESSOR SHALL VALUE PROPERTY UNDER THIS ARTICLE  
45 BASED ON THE INCOME APPROACH TO VALUE USING THE ACTUAL ANNUAL INCOME AND

1 EXPENSES OF THE PROPERTY AND USING A CAPITALIZATION RATE OF TWELVE AND  
2 ONE-HALF PER CENT PLUS THE EFFECTIVE TAX RATE.

3 C. THE OWNER OF A LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY  
4 MAY ELECT TO HAVE THE VALUATION OF THE PROPERTY DETERMINED BY THE INCOME  
5 APPROACH TO VALUE BY SUBMITTING ALL REASONABLY NECESSARY INCOME AND EXPENSE  
6 INFORMATION FOR THE OWNER'S MOST RECENT FISCAL YEAR TO THE COUNTY ASSESSOR  
7 BEFORE SEPTEMBER 1 OF THE YEAR IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE  
8 PROPERTY WILL BE VALUED. IF THE OWNER DOES NOT HAVE AN ENTIRE YEAR OF  
9 HISTORICAL INCOME AND EXPENSE DATA, THE OWNER MAY SUBMIT AND THE ASSESSOR  
10 SHALL USE FOR VALUATION PURPOSES THE PRO FORMA INCOME AND EXPENSE DATA THAT  
11 WAS PROVIDED TO THE DEPARTMENT OF HOUSING AT THE TIME A PROJECT IS APPROVED.

12 D. THE DEPARTMENT OF REVENUE SHALL PRESCRIBE A FORM FOR AN OWNER OF A  
13 LOW INCOME MULTIFAMILY RESIDENTIAL HOUSING TAX CREDIT PROJECT TO MAKE AN  
14 ELECTION TO VALUE THE PROPERTY PURSUANT TO THIS ARTICLE AND REQUIRE THE OWNER  
15 TO SUBMIT THE NECESSARY INCOME AND EXPENSE INFORMATION.

16 E. ALL INFORMATION THAT A TAXPAYER SUBMITS TO THE ASSESSOR PURSUANT TO  
17 THIS ARTICLE IS CONFIDENTIAL PURSUANT TO CHAPTER 2, ARTICLE 1, OF THIS TITLE.

18 F. FOR THE PURPOSES OF THIS SECTION:

19 1. "ACTUAL ANNUAL EXPENSES" MEANS ALL OPERATING EXPENSES INCLUDING  
20 MAINTENANCE, ADMINISTRATIVE SALARIES AND EXPENSES, UTILITIES, SECURITY  
21 EXPENSES, INSURANCE AND TAXES, EXCEPT PROPERTY TAXES ESTABLISHED PURSUANT TO  
22 SUBSECTION B. FOR PROPERTIES WHERE THE TENANTS PAY THEIR OWN UTILITY COSTS,  
23 UTILITY COSTS FOR COMMON AREAS AND VACANT UNITS ARE INCLUDED IN THE OWNER'S  
24 OPERATING EXPENSES.

25 2. "ACTUAL ANNUAL INCOME" MEANS ALL OPERATING INCOME GENERATED FROM  
26 THE RENTAL OF REAL PROPERTY INCLUDING RENTS, APPLICATION AND LATE FEES AND  
27 FORFEITED SECURITY DEPOSITS. ACTUAL INCOME DOES NOT INCLUDE THE FEDERAL  
28 INCOME TAX CREDITS OR INVESTMENT PROCEEDS RESULTING FROM THE FEDERAL INCOME  
29 TAX CREDITS THAT ARE ALLOCATED TO THE PROPERTY.

30 42-13504. Evidentiary requirements

31 AS A CONDITION OF VALUATION UNDER THIS ARTICLE, AN OWNER OR OPERATOR OF  
32 LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY MUST PROVIDE WRITTEN  
33 DOCUMENTATION TO THE ASSESSOR CONFIRMING THAT THE PROPERTY HAS BEEN PLACED IN  
34 SERVICE AS A LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL PROPERTY CONSISTENT  
35 WITH SECTION 42 OF THE INTERNAL REVENUE CODE.

36 42-13505. Appeals

37 A. AN OWNER OR OPERATOR OF LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL  
38 PROPERTY WHO OPTS INTO THE VALUATION METHOD SET FORTH IN THIS ARTICLE MAY  
39 APPEAL THE VALUE OF THE PROPERTY PURSUANT TO CHAPTER 16 OF THIS TITLE. ON  
40 APPEAL, THE OWNER OR OPERATOR MAY SUBMIT MORE RECENT INCOME AND EXPENSE DATA  
41 FROM THE YEAR PRECEDING JANUARY 1 OF THE VALUATION YEAR TO BE USED IN  
42 CALCULATING THE VALUE OF THE PROPERTY BY THE VALUATION METHOD SET FORTH IN  
43 THIS ARTICLE.

44 B. AN OWNER OR OPERATOR OF LOW INCOME MULTIFAMILY RESIDENTIAL RENTAL  
45 PROPERTY WHO DOES NOT OPT INTO THE VALUATION METHOD SET FORTH IN THIS ARTICLE  
46 MAY APPEAL THE VALUE OF THE PROPERTY PURSUANT TO CHAPTER 16 OF THIS TITLE.

Passed the House March 1, 2011

Passed the Senate April 19, 2011

by the following vote: 53 Ayes,

by the following vote: 27 Ayes,

3 Nays, 3 Not Voting

3 Nays, 0 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

Cheryl Laube  
Chief Clerk of the House

[Signature]  
~~Assistant~~ Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

/ day of \_\_\_\_\_, 2011

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 2011

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

H.B. 2166

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 19, 2011,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of April, 2011,

at 8:30 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_,  
**VETO**  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

H.B. 2166

\_\_\_\_\_  
Secretary of State